

ESTTA Tracking number: **ESTTA614803**

Filing date: **07/09/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	NVIDIA Corporation
Granted to Date of previous extension	07/09/2014
Address	2701 San Tomas Expressway Santa Clara, CA 95050 UNITED STATES
Attorney information	MARK A JANSEN FENWICK & WEST LLP 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041 UNITED STATES trademarks@fenwick.com Phone:(650) 988-8500

Applicant Information

Application No	86042441	Publication date	03/11/2014
Opposition Filing Date	07/09/2014	Opposition Period Ends	07/09/2014
International Registration No.	NONE	International Registration Date	NONE
Applicant	Hardware Labs Performance Systems, Inc. 39 Don Ramon St., Talayan Village Quezon City, 1104 PHILIPPINES		

Goods/Services Affected by Opposition

Class 009. First Use: 2005/10/01 First Use In Commerce: 2006/01/06
All goods and services in the class are opposed, namely: Central processing unit (CPU) coolers; Central processing unit (CPU) fans; Central processing units (CPU) Coolers for processors for data processing equipment; Central processing unit (CPU) coolers, namely, liquid coolers for processors, in particular water coolers

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	GTX
Goods/Services	computer hardware and software including: goods related to Central processing unit (CPU) coolers; Central processing unit (CPU) fans; Central processing units (CPU) Coolers for processors for data processing equipment; Central processing unit (CPU) coolers, namely, liquid coolers for processors, in particular water coolers

Attachments	Notice_of_Opposition_re_GTS_App.pdf(35308 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/MJansen/
Name	MARK A JANSEN
Date	07/09/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark App. Ser. No. 86/042,441

Filed: August 20, 2013

Published: March 11, 2014

Mark: GTS

)	
NVIDIA Corporation,)	
)	No.
Opposer,)	
)	
vs.)	
)	
Hardware Labs Performance Systems, Inc.,)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

NVIDIA Corporation (“Opposer”), a Delaware corporation having a principal place of business at 2701 San Tomas Expressway, Santa Clara, CA 95050, believes that it will be damaged by registration of the mark GTS (“Applicant’s Mark”) as shown in Application Serial No. 86/042,441 (the “Application”), filed by Hardware Labs Performance Systems, Inc. (“Applicant”), and hereby opposes the Application, alleging as grounds for the opposition that:

1. As is evidenced by the publication of Applicant’s Mark in the March 11, 2014 issue of the Official Gazette, Applicant seeks to register the mark in International Class 9 for: “Central processing unit (CPU) coolers; Central processing unit (CPU) fans; Central processing units (CPU) Coolers for processors for data processing equipment; Central processing unit (CPU) coolers, namely, liquid coolers for processors, in particular water coolers.” The Application was filed on August 20, 2013, allegedly based on Section 44(e) and Applicant’s alleged use of the

mark, claiming October 1, 2005 as the date of first use anywhere and January 6, 2006 as the date of first use in commerce.

2. On information and belief, Applicant did not use the applied for mark in the US as of October 1, 2005.

3. On information and belief, Applicant did not use the applied for mark in commerce in the US as of January 6, 2006.

4. On information and belief, Applicant did not use the applied for mark in commerce in the US as of August 20, 2013.

5. Opposer, founded in 1993, is a worldwide leader in the design and development of computer graphics hardware, software and related services. Since at least as early as June 22, 2005, Opposer has used the GTX mark throughout the United States for computer hardware and software. These goods are related to the goods listed in the Application, namely: “Central processing unit (CPU) coolers; Central processing unit (CPU) fans; Central processing units (CPU) Coolers for processors for data processing equipment; Central processing unit (CPU) coolers, namely, liquid coolers for processors, in particular water coolers.”

6. Opposer’s use of the GTX mark by Opposer has been valid and continuous since at least as early as June 22, 2005 and has not been abandoned. As a consequence of Opposer’s extensive marketing, promotion, advertising, and sales activity, Opposer’s GTX mark has come to be identified as a designator of Opposer’s goods, and as a result, has become a valuable asset of Opposer, and a principal symbol of its goodwill.

7. Opposer has clear priority over the Application. Opposer began using the GTX mark at least as early as June 22, 2005, which is over eight years before the Application filing date and well before the date of first use alleged in the Application.

8. Because of the parties' substantially similar marks and their identical and/or related goods in the US, and because the parties' respective goods are likely to be marketed to the same consumers and potential consumers in the same or related channels of trade in the US, Applicant's Mark is likely to cause confusion or mistake or to deceive, thereby causing loss, damage, and injury to Opposer and the purchasing public.

9. Registration of the Applicant's Mark will also lead the public to incorrectly conclude that Applicant or its goods displaying the alleged GTS mark have been sponsored, authorized or licensed by Opposer.

WHEREFORE, Opposer prays that this Notice of Opposition be sustained, that Applicant's Trademark Application Serial No. 86/042,441 be rejected, and that Applicant be denied registration of GTS as a trademark for the goods specified in the Application.

Please charge any requisite fees for this Notice of Opposition to our Deposit Account No. 50-0261.

Respectfully submitted,

Dated: July 9, 2014

/MJansen/
Eric Ball, Esq.
Mark A. Jansen, Esq.
Attorneys for Opposer
FENWICK & WEST LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
650-988-8500

PROOF OF SERVICE

I declare that:

I am employed in the County of Santa Clara, California.

I am over the age of eighteen years and not a party to the within cause; my business address is Silicon Valley Center, 801 California Street, Mountain View, California 94041. On the date indicated below, I served the within NOTICE OF OPPOSITION, on the interested parties in said cause, by placing a true copy thereof as indicated below, addressed as follows:

Philip S. Griffin
The Griffin Law Group
One World Trade Center
121 SW Salmon St., Suite 1100
Portland, OR 97221
Email: phil@griffinlawgroup.com

Hardware Labs Performance Systems, Inc.
39 Don Ramon St.
Talayan Village
Quezon City 1104
Philippines
Email: wilbert@hardwarelabs.com ;
wilbert@hwlabs.com

- ☒ **BY US MAIL:** by placing the document(s) listed above in a sealed envelope for collection and mailing following our ordinary business practices. I am readily familiar with our ordinary business practices for collecting and processing mail for the United States Postal Service, and mail that I place for collection and processing is regularly deposited with the United States Postal Service that same day with postage prepaid.
- ☐ **BY E-MAIL:** by mutual agreement between the parties, causing to be transmitted via e-mail the document(s) listed above to the addressee(s) at the e-mail address(es) listed above.
- ☐ **BY PERSONAL DELIVERY:** by causing to be personally delivered the document(s) listed above to the addressee(s) at the address(es) set forth above.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Mountain View, California, this 9th day of July 2014.

/Debbie Shaw/

Debbie Shaw